

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 505 of 1987

with

SPECIAL CIVIL APPLICATION No 1228 of 1987

And

CIVIL APPLICATION NO. 2693 OF 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE CO-OPERATIVE	LAND DEVLOPMENT BANK LTD
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Versus

GUJARAT STATE CO-OPERATIVE	LAND DEVLOPMENT BANK LTD EMPLO
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Appearance:

1. Special Civil Application No. 505 of 1987
MR SN SHELAT for Petitioner
MR PT JASANI for Respondent No. 1
 2. Special Civil ApplicationNo 1228 of 1987
MR TR MISHRA for Petitioner
NOTICE SERVED for Respondent No. 1
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Date of decision: 25/02/2000

COMMON ORAL JUDGEMENT

1. Special Civil Application No. 505 of 1987 has been preferred by Gujarat State Co-Operative Land Development Bank Limited, against the award of the Industrial Tribunal dated 28-7-1986. The dispute raised before the Industrial Tribunal was concerning fixation of interse seniority between two employees, that is, workmen Shri. U.B.Upadhyaya and Shri. H.M. Jethwa. After adjudicating the dispute, learned Member of the Tribunal made the impugned award. The operative part of which reads as under:-

" O R D E R "

The Reference is partly allowed. Shri. Upadhyay is entitled to supervisor Grade-C and Supervisor Grade-B from the date on which Shri Jethwa was given promotion in the said grades and accordingly his notional pay is to be fixed upto 7-2-78 and after 7-2-78 on the basis that had he been promoted earlier as stated above, the amount due for payable, after deducting the amount already paid to him be paid to Shri. Upadhyay by the bank as arrears within two months from the date of publication of this award. "

(Translated into English from Gujarati)

2. At the time of hearing, learned counsel appearing for the Bank furnished the bio-data of both the employees, that is the workmen Shri. Upadhyaya and Shri Jethwa in a tabular chart. It is pointed out that Shri. Upadhyaya entered in service of the Bank on 28-11-1956 as Recovery Clerk not on any pay scale or grade, but on a fix pay of Rs.40/-. He was subsequently appointed on the regular basis w.e.f. 1-4-1957 in the grade of Rs.30-1-40-EB-2-50 by order issued on 26-4-1957.

3. Compared to him, Shri. H.M. Jethwa was appointed on a regular scale of pay as Junior Clerk in the grade of Rs.40-3-70 by order dated 22-3-1957. It is submitted on behalf of the Bank that, since Shri. Upadhyaya came to be appointed on regular scale only w.e.f. 1-4-1957, that is after the regular appointment of Shri. H.M. Jethwa on 22-3-1957, the learned Member

of the Industrial Tribunal went wrong in granting relief to Shri. Upadhyaya by directing proforma fixation of his seniority in the promoted cadre and giving him monetary benefits on that basis.

4. Learned counsel appearing for the workman Shri. Upadhyaya invited attention of this Court to para-11 of the Award, in which, the question of seniority raised before the Tribunal has been considered. Learned Member of the Tribunal has pointed out from the circulars of the Bank produced on the question of fixation of seniority that the date of reporting of duty on appointment was reckoned as date of seniority. The circulars of the Bank were issued in the year 1972. This was not the principle of fixing of seniority in 1962. As has been held by the Tribunal, as Shri. Upadhyaya started his services in the Bank, may be on a fixed salary from 28-11-1956, on the basis of the circulars of the Bank laying down the principle that the date of joining should be reckoned as the date for the purpose of seniority, Shri. Upadhyaya is senior to Shri. H.M. Jethwa, and because of wrong fixation of seniority, Shri. Upadhyaya suffered in his future promotion and pay.

5. After hearing learned counsel for the parties, this Court does not find any scope for interference in exercise of powers under Sec. 227 of the Constitution. The normal principle of fixation of seniority is length of service, unless the service rules or circulars of the Bank show a departure from the said rule. The Tribunal has considered the circulars of the Bank in the light of oral evidence of the employee and the management. After examining the evidence led before it, the Tribunal came to the conclusion that, from 1972 the Bank has been following the principle of length of service as the basis for fixation of seniority. This Court, therefore, does not find any error in the award of the Tribunal.

6. During pendency of this petition, by interim orders passed on 16-9-1987 the Bank was directed to pay a sum of Rs.3606-56 being the undisputed amount due and payable as per its calculation on the basis of the award to the employee. With regard to the remaining amount due, the matter of computation was left to the Tribunal. In Special Civil Application No. 1228/87, a copy of the consent order of the Tribunal dated 12-12-1997 has been produced to show that the Tribunal has worked out the actual amount due on the basis of notional fixation of date of promotion of Shri. Upadhyaya. The difference of pay due and payable has thus been quantified. On behalf of the Bank, it is stated that, the amount so computed by

the Tribunal has been deposited in the Tribunal and is payable to Shri. Upadhyaya on the decision of this petition.

7. As a result of the discussions aforesaid, this petition fails and is hereby dismissed. It is directed that the amount found due and payable to respondent Shri. U.B. Upadhyaya, which is in deposit with the Tribunal, be paid to him along with the interest that has accrued thereon. Rule discharged. However, in the facts and circumstances of the case there shall be no order as to costs.

8. In view of aforesaid discussions, the cross petition being Special Civil Application No. 1228 of 1987 also gets disposed of. No order on civil application. No order as to costs.

Dt: 25-2-2000

(D.M. Dharmadhikari, C.J.)

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